

August 10, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0004**
Proposed Ordinance No. **2004-0157**

KENTLAKE HIGHLANDS

Preliminary Plat Application
And

Application for Transfer of Development Rights

Location: Between Southeast 296th Street (if extended) and Southeast 300th Street, west of 219th Avenue Southeast and east of the Druids Glen Golf Course (approximately 212th Avenue Southeast if extended)

Applicant: **Kentlake Highlands LLC**
825 Fifth Avenue, Suite 202
Kirkland, Washington 98033
Telephone: (425) 202-3675

King County: Department of Development and Environmental Services, *represented by* **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7167
Facsimile: (206) 296-6613

SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Second Recommendation:	Continue, to enable all parties to respond to lack of availability Of fire protection service
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

EXAMINER PROCEEDINGS:

Hearing Opened, and Continued for Administrative Purposes:

June 3, 2004

Hearing Reopened and Closed:

July 1, 2004

Note: The June 3, 2004 continuation for administrative purposes was granted at the request of the Applicant, with the concurrence of DDES, to allow for the submission of additional evidence in writing concerning the availability of fire protection and emergency medical services for the proposed development. Written documents addressing this issue were received from the parties through June 17, 2004 (exhibits no. 31-33). On June 18, 2004 the Examiner received additional documents from the Applicant and the attorney for King County Fire District #17 that had the effect of creating substantial doubt as to the adequacy of fire protection and emergency medical services that would be available to early residents of the proposed development. On June 23 the Hearing Examiner notified the parties that the record in this proceeding, as it then existed, would necessarily lead the Examiner to find that this proposed plat did not make appropriate provision for the public health and safety with respect to fire protection and emergency medical services. However, to afford the Applicant additional opportunity to address this issue, the Examiner agreed to reopen the public hearing to consider additional evidence on August 19, 2004, provided that the Applicant and DDES would waive time limits for processing this application. (See exhibit no. 37) Written waivers were received by the Examiner's Office from the Applicant and DDES.

On June 28, 2004, following discussion among the Applicant's representative, DDES, Fire District #17 and staff of the Hearing Examiner's Office, an amended notice of reopened hearing was issued, changing the date of the reopened hearing to July 1, 2004. The parties were advised at the time that the Hearing Examiner was then fully engaged in the review of prefiled testimony and briefs in another matter that would be under consideration through the end of July. Although the examiner agreed to accelerate the date of the reopened hearing on the Kentlake Highlands proposal to accommodate the Applicant's request for speedy resolution, the Examiner's decision would not be issued until his decision on the Brightwater wastewater treatment system proceedings was completed. The Brightwater decision was issued on August 3, 2004.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Surface water drainage
- Traffic mitigation (intersection standards)
- Fire protection and emergency medical service
- Transfer of density credits
- Access to adjacent property

SUMMARY: A transfer of five (5) density credits is approved, and the preliminary plat application for subdivision of 237 lots, and one tract for future development, in the urban area is GRANTED, subject to conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Developer: Kentlake Highlands LLC
825 Fifth Avenue, Suite 202
Kirkland, WA 98033
425-202-3675

Engineer: Triad Associates
11814 115th Avenue Northeast
Kirkland, WA 98034
425-821-8448

STR: 4-21-06

Location: Between Southeast 296th Street (if extended) and Southeast 300th Street, west of 219th Avenue Southeast and east of the Druids Glen Golf Course (approximately 212th Avenue Southeast if extended)

Zoning: R-4
Acreage: 59.5 acres
Number of Lots: 237 lots and one tract for future development
Density: Approximately 4.08 units per acre
Lot Size: Approximately 5,000 square feet
Proposed Use: Single-family detached dwellings
Sewage Disposal: Soos Creek
Water Supply: Covington
Fire District: King County Fire District #17
School District: Kent School District
Complete Application Date: April 1, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the June 3, 2004 public hearing are found to be correct and are incorporated herein by this reference. Said report is exhibit no. 2 in the hearing record of this proceeding.
3. The schools that will serve the subject property are all operated by the Kent School District.
4. Discharge of all storm water will be by infiltration, with overflow directed to the south. A surface water drainage adjustment request for the proposal (exhibit no. 22) was approved on February 5, 2004. This adjustment permits discharge of surface water at other than the natural location. The adjustment is supported by the revised level 1 downstream analysis (issued February 7, 2003 and revised May 20, 2003). There will be an on-site diversion of runoff to a single infiltration facility, sized to infiltrate the 100 year storm run-off event, with a 10% to 20% safety factor. Emergency overflow will be diverted to the eastern edge of the high school property, where it can follow an easement that will provide a safer path across the high school property. All surface water runoff from the site will be controlled to meet the level 1 flow control and resource stream protection water quality requirements of the 1998 Surface Water Design Manual.

5. The number of lots proposed for development on the subject property exceeds the base density of 4 dwelling units per acre, but is less than the maximum density of six dwelling units per acre permitted in the R-4 zone classification. The development of 237 lots on the subject property will require the transfer of density credits. The Applicant has a certificate for the transfer of five development rights, which appears to be sufficient to permit the proposed density. Final density calculations shall be provided at the time of engineering plan submittal.
6. The mitigated determination of environmental nonsignificance requires the Applicant to mitigate the significant adverse impact that the development will have at the intersection of 216th Avenue Southeast and Covington-Sawyer Road. The mitigation required is to fully fund and construct a multi-phase traffic signal system, together with related apertances and roadway channelization. The MDNS requires completion no later than “(a) the lot recordation which would result in the 30th project-generated PM peak hour vehicle trip entering the intersection (based upon the distribution in the July 2003 traffic impact analysis), or (b) based upon a subsequent analysis by Transpo and approval by King County DOT, the point at which the calculated level-of-surface would result in degradation to LOS “F” – if this LOS “F” condition would occur after the recording of lots which would result in the 30th project-generated PM peak hour vehicle trip entered (sic) the intersection. (King County Code 14.80).”

The Applicant’s engineer presented evidence that the 101st lot recorded would trigger the requirement for completion of the traffic signal, based upon the condition of the MDNS. However, the King County traffic engineer testified that LOS F already exists during the AM peak hour. This testimony is consistent with descriptions of current traffic conditions provided by neighbors of the proposed development, and was not contested by the Applicant. The county engineer also testified that there is considerable pedestrian activity at this intersection.

King County Code Chapter 14.80 establishes intersection standards for the purpose of assuring adequate levels of service, safety and operating efficiency at intersections serving and directly impacted by proposed new development. KCC 14.80.010.B.1. A significant adverse impact is defined as any traffic condition directly caused by proposed development that would reasonably result, at the time any part of the development is completed, in an intersection that provides access functioning at a level of service worse than “E”, carrying 30 or more added vehicles in any one hour period as a direct impact of the proposed development. KCC 14.80.030 A. This definition of significant adverse impact is not limited to the PM peak hour.

7. The owner (Schneider Homes) of adjacent property to the north, at the northwest corner of the proposed Kentlake Highlands plat, has requested that access be provided to its property, approximately 15 acres. The Schneider Homes property lies south of the plat of Sawyer Estates, east of the plat of Remington, and west of the plat of Smokerise. The sole current access is a 30 foot wide dedicated street within the plat of Sawyer Estates.

The only non-emergency vehicle access points to the proposed development of Kentlake Highlands are proposed to be from 219th Avenue Southeast/Southeast 300th Street, which will function as a neighborhood collector. It has its sole access to the county arterial road system at the intersection of 219th Avenue Southeast and Southeast 296th Street. The three access points to 219th Avenue Southeast/Southeast 300th Street are at road “A” (on the east side of the plat); road “D” (on the south side); and at a “bubble” serving six lots at the southeast corner. On the north boundary of Kentlake Highlands, the property has access to 215th Avenue Southeast, with a 60 foot wide right-of-way, which is developed as a rural sub collector street. Access from 215th Avenue Southeast to Kentlake Highlands will be limited to pedestrians and emergency vehicles only. On December 15, 2003, the King County Road Services Division issued a road variance

L03V0042 for the proposed plat of Kentlake Highlands (exhibit no. 21). This variance from the King County Road Standards permits the development of Kentlake Highlands to serve 247 lots with only one vehicle access route to the arterial road system. (The Road Standards normally limit the number of lots on a sole access to a maximum of 100.)

If 215th Avenue Southeast were connected as a through street into Kentlake Highlands, it would function as a neighborhood collector. Additional traffic to and from this new subdivision and Kentlake High School would cut through the existing plat of Smokerise, where 215th Avenue Southeast functions as a sub-collector. The additional traffic would change the character of the neighborhood and create a hazard. If a public road were extended to connect through the Schneider Homes property to Sawyer's Estates, similar issues of public safety and change to the existing character of that neighborhood, from cut through traffic to Kentlake High School and Kentlake Highlands, would arise. However, those issues could be addressed on the Schneider Homes property by limiting traffic to and from the north and south, internally, as a condition of the development of that property.

A condition of the road variance for Kentlake Highlands is that emergency vehicle access, and full time pedestrian access, be provided at 215th Avenue Southeast. This access will be constructed with a gate that precludes vehicular access, other than emergency vehicles. This emergency access is supported by King County Fire District #17 and the King County Sheriff, as well as the County Roads Service Division and DDES.

DDES recommends against creation of an additional access to the Schneider Homes property, and the Applicant also opposes a requirement to provide such access. The dedication of right-of-way and construction of a road through the Kentlake Highlands property to the Schneider Homes property is not needed as a result of the development of the Kentlake Highlands property or as a requirement to better serve future residents of Kentlake Highlands. The development of Kentlake Highlands does not adversely affect any existing access to the Schneider Homes property. However, a connection between Kentlake Highlands and the adjacent Schneider Homes property would provide improved neighborhood circulation and facilitate higher density of development in the urban area, consistent with the Comprehensive Plan and current zoning.

8. King County Fire District #17 contracts with the City of Black Diamond for the provision of fire protection and emergency medical services. The necessary facilities and equipment, and personnel to respond to incidents within Fire District #17, are owned and employed by the city. At the present time, the City of Black Diamond does not have sufficient equipment and personnel to provide service to the proposed development of Kentlake Highlands. The City of Black Diamond currently achieves its standards of service for response to fire incidents less than 17% of the time. The City is currently unable to attract and retain volunteer personnel for its two fire service stations in the area. It has only two full-time and one part-time paid firefighters, which does not provide full-time coverage. There are times when no paid or volunteer firefighter coverage is available within the district.

To address this lack of available service, the Applicant has agreed to contribute to King County Fire District #17 the amount of \$1,052 per dwelling, and to require that sprinklers be installed on certain lots that will be identified by the Chief of Fire District No. 17. The payment of that fee will assist the City of Black Diamond in the acquisition of fire and emergency medical service capital equipment. This will, in turn, enable the City of Black Diamond Fire Department to employ additional personnel who will be available to provide adequate fire and emergency medical service protection to the homes and residents in Kentlake Highlands.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreation, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant on March 25, 2004, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.
5. The proposed transfer of density credits to permit the development of not more than 237 lots on the subject property meets the requirements of KCC 21A.37.030 for receiving sites.
6. In order to meet the requirements of KCC Chapter 14.80 (intersection standards) to mitigate significant adverse impacts of development (since the current AM peak hour LOS is “F”), the required improvements for the roadway intersection of Southeast Covington-Sawyer Road/216th Avenue Southeast must be completed at such time as 30 or more vehicles are added to that intersection in any one hour period as a result of occupancy of new dwelling units within the plat of Kentlake Highlands.
7. The proposed plat, as revised and received on March 25, 2004, with the variance from King County Road Standards issued by the Road Services Division on December 15, 2003, meets the requirements for access to and from the subject property, provides adequate emergency vehicle access, and pedestrian circulation. An additional access to the north boundary of the subject property, to serve future residential development of the Schneider Homes property, would be consistent with the King County Comprehensive Plan policies that encourage development in the urban area, but would provide no benefit to the subject property. The development of Kentlake Highlands does not have the impact of limiting existing access to the Schneider Homes property.

Any future connection directly to the north, between Covington-Sawyer Road and Kentlake Highlands, would be detrimental to existing residents within the plat of Sawyer Estates and future residents within the plat of Kentlake Highlands, if through traffic was enabled to travel from Covington-Sawyer Road to Kentlake High School. King County cannot require the Applicant to dedicate right-of-way solely to serve the Schneider Homes property. However, if the Applicant and Schneider Homes agree to establish a connection between the two properties, and Schneider Homes commits to a development plan that does not connect north and south roads within its property, King County should permit access from Kentlake Highlands to the Schneider Homes property to improve its development potential consistent with the goals of the Comprehensive Plan.

8. The agreement between the developer of Kentlake Highlands and King County Fire District #17, to provide funds to be used by the City of Black Diamond Fire Department for the acquisition of fire and emergency medical services capital equipment, will enable the city to employ additional fire protection and emergency medical services personnel. The additional personnel will be available to meet the fire protection and emergency medical service needs of future residents of the Kentlake Highlands development. The additional agreement by the developer, to require sprinklers within homes constructed on lots to be designated by the Chief of Fire District #17, is also necessary to protect residents in homes where fire fighter response may be delayed due to restricted access or a need to travel extended routes. Implementation of these agreements will meet the needs of the proposed development and the fire district to assure adequate fire protection and emergency medical services to the Kentlake Highlands development.

DECISION:

The transfer of up to five (5) density credits to the subject property is approved, and the preliminary plat of Kentlake Highlands, as revised and received March 25, 2004, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with all density requirements of the R-4 zone classification, and shall meet the minimum dimensional requirements of the R-4 zone classification. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services. The Applicant shall provide the TDR certificates prior to engineering plan approval. In the event TDR certificates are not provided, the number of lots shall be decreased to comply with the base density of the zone.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS), subject to any approved variances.
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
6. Except as permitted by the surface water adjustment (exhibit no. 22), final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
7. The storm water detention facilities shall meet at a minimum the Level 1 Flow Control and the Regionally Significant Stream Protection requirements in the 1998 King County Surface Water Design Manual (KCSWDM). Note that an infiltration facility is proposed in the Tract V detention tract. A 100-year overflow route shall be provided for this facility according to the KCSWDM and the approved surface water adjustment. Appropriate geotechnical and infiltration feasibility studies per the KCSWDM shall be submitted prior to engineering plan approval.
 8. The 100-year floodplain for all onsite streams and wetlands shall be shown on the engineering plans and the final recorded plat per Special Requirement #2 of the KCSWDM.
 9. A surface water adjustment (L03V0037) is approved for this site. All conditions of approval for this adjustment shall be met prior to engineering plan approval.
 10. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):
 - a. A full width turnaround shall be provided at the south terminus of 215th Ave SE (near Lots 52 and 53) either onsite or offsite per Road Variance L03V0042. If the turnaround is to be constructed offsite, sufficient R/W shall be obtained. All additional conditions of approval for this road variance shall be met prior to engineering plan approval. Note that the road variance also requires road and signal improvements near the SE 296th St./219th Ave. SE intersection.
 - b. Tract D shall be improved as an emergency vehicle access, with a minimum 20 ft. pavement width. The access shall be gated in accordance with the above road variance.
 - c. FRONTAGE: The frontage along SE 300th ST /219th Ave SE(north and west side) shall be improved to the urban neighborhood collector standard.
 - d. Road A (from Road B/Road J east to 219th Ave SE) shall be improved to the urban neighborhood collector standard.
 - e. Road A (from Road C to Road B/Road J); Road C (from Road A to Road E); Road E (from Road C to east line of Lot 49); Road J(from Road A to Road H); Road H; and Road D (from SE 300th St. to Road F) shall be improved to the urban sub collector standard.

- f. Road A (from Road C to Road D); Road B(from Road A to Road D); Road E (from Road C to Road F); and Road F shall be improved to the urban sub access street standard.
 - g. Road B(from Road D to end); Road E(from Road F to end); Road G(from Road F to end); Road J(from Road H to end); and Road K shall be improved to the urban minor access street standard.
 - h. Tract J adjoining Lots 141 thru 144 shall be improved as a joint use driveway per Section 3.01 of the KCRS. This tract shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the final recorded plat.
 - i. Tracts M, R, and U shall be improved as private access tracts per Section 2.09 of the KCRS. These tracts shall be owned and maintained by the lot owners served. Notes to this effect shall be included on the final recorded plat.
 - j. Modifications to the above road conditions may be considered according to variance provisions in Section 1.08 of the KCRS.
 - k. Off-site access to the subdivision shall be over a full-width, dedicated and improved road which has been accepted by King County for maintenance. If the proposed access road has not been accepted by King County at the time of recording, then said road shall be fully bonded by the Applicant of this subdivision. (KCRS 1.03 D.)
 - l. The developer shall have the option of re-aligning and extending Road “E” to the north property line in the vicinity of proposed lot 68, and relocating that lot elsewhere on the plat, if feasible. If the developer elects to do so, DDES shall be informed prior to submission of engineering plans, and appropriate road classifications in the eastern portion of the plat shall be re-evaluated. Re-evaluation may be based upon assumptions that the maximum permitted number of lots on the adjacent Schneider Homes property will be served from the north (via the existing 30 foot right-of-way), and that there will be no road connection between the north and south accesses to the Schneider Homes property, except for emergency vehicles.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the

- plat and shall be collected prior to building permit issuance.
14. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
 15. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. The Class 2 wetlands shall have a minimum 50-foot buffer of undisturbed vegetation as measured from the wetland edge.
- b. Buffer width averaging may be allowed by King County if it will provide additional protection to the wetland or enhance their functions, as long as the total area contained in the buffer on the development proposal site does not decrease. In no area shall the buffer be less than 65 percent of the required minimum distance. To ensure such functions are enhanced a mitigation plan may be required for the remaining on-site sensitive areas. An enhancement plan would be submitted for review during engineering review.
- c. Sensitive area Tract(s) shall be used to delineate and protect sensitive areas and buffers in development proposals for subdivisions and shall be recorded on all documents of title of record for all affected lots.
- d. A 15-foot BSBL shall be established from the edge of buffer and/or the sensitive areas Tract(s) and shown on all affected lots.
- e. A mitigation plan and financial guarantee/bond will be required for any proposed impacts to sensitive areas. The bond amount would include all components of the mitigation plan including, but not limited to, plantings, grading, fencing, signs, inspections, and monitoring for five years.
- f. Prior to commencing construction activities on the site, the applicant shall temporarily mark sensitive areas Tract(s) in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive areas are completed.
- g. Prior to engineering approval of construction activities on the site, the boundary between the sensitive area Tract(s) and adjacent land shall be identified using permanent signs and fencing. Sign specifications shall be shown on engineering plans and shall be installed every 100 feet or as deemed appropriate by county staff at the time of engineering review.
- h. During engineering and/or early start plat review the applicant shall provide a wetland hydrology analysis to demonstrate how the wetland hydrology will be maintained post-construction.

- i. Detention out-fall structures may be permitted within the wetland buffers. However, any outfall structures shall be located in the outer edge of the buffer, if possible. All buffer impacts shall be mitigated.
- j. Several small wetlands were delineated and verified during the preliminary review. Per King County Code 21A.24, these wetlands were considered non-regulated and may be impacted/filled without mitigation.
- k. During engineering and/or early start review, the plan set shall be routed to the sensitive areas group to determine if the above conditions have been met.
- l. Development authorized by this approval may require other state and/or federal permits. It is the applicant's responsibility to correspond with these agencies prior to beginning work on the site.
- m. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

- 16. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 (including no dimension less than 30 feet except trail segments), and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. An overall detailed recreation space plan shall be submitted for review and approval by DDES, prior to or concurrent with the engineering plans. This plan shall include location, area calculations, dimensions, and landscape specs, equipment specs, etc. Sensitive area tracts may not be utilized toward the recreation space requirement.

Additional facilities/improvements may be required pursuant to KCC 21A.14.180. This may result in the reconfiguration of the tracts and/or lots. Fencing and/or additional landscaping may be required along the internal road to prevent potential conflicts between recreation space users and vehicular traffic.

- b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SR-169 is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

19. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval.
- a. A 4-foot high fence and signs shall be located along the outer boundary of the wetland buffers (i.e. Sensitive Area Tracts). The fencing and sign details shall be shown on the final engineering plans. Sensitive area signs shall be installed on the fence at 100-foot intervals or as appropriate. Fence details and materials shall be reviewed by DDES during engineering plan review. The fencing and signs shall be maintained by the abutting lot owners and/or Homeowner's Association as identified on the face of the final plat. (King County Comprehensive Plan Policies E-107, E-134).
 - b. In order to mitigate the significant adverse impact that the development will have at the intersection of 216th Ave SE/Covington-Sawyer Road, the applicant will fully fund and construct a multi-phase traffic signal system together with related appurtenances and roadway channelization. The design of the traffic signal system will be submitted to the City of Black Diamond and King County DOT for review and approval, be bonded for, and be under construction within an approved schedule for completion no later than (a) the lot recordation which would result in the 30th project-generated PM peak hour vehicle trip entering the intersection (based upon the distribution in the July 2003 traffic impact analysis), or (b) based upon a subsequent analysis by Transpo and approval by King County DOT, the point at which the calculated level-of-service would result in degradation to LOS "F" -- if this LOS "F" condition would occur after the recording of lots which would result in the 30th project-generated PM peak hour vehicle trip entered the intersection. (King County Code 14.80). (**See condition no. 21**)
 - c. The applicant shall construct the identified off-site and frontage improvements to Southeast 296th Street, between 216th Ave SE and the Black Diamond Fire Station on SE 296th Street and (b) to the permanent terminus of 215th Avenue SE, per the conditions of the road variance (file no. L03V0042) which granted conditional approval to a variance to section 2.20, Access and Circulation requirements (aka the "100-lot rule") of the King County Road Standards. (King County Code 14.42)
20. The improvements (traffic signal, appurtenances and channelization) to the intersection of 216th Avenue Southeast/Covington-Sawyer Road shall be completed at such time as the 30th project-generated peak hour trip entering the intersection results from the construction and occupancy of homes within the development. This requires earlier completion of the improvements (to comply with KCC 14.80.030) than is required by the MDNS.
21. The Applicant's agreement with King County Fire District #17 (exhibit no. 32) shall be executed, and its implementation bonded or otherwise secured to the satisfaction of DDES, prior to final plat recording. Lots designated by the Chief of King County Fire District No. 17 as requiring sprinklers shall be so designated on the final plat.

ORDERED this 10th day of August, 2004.

James N. O'Connor
King County Hearing Examiner
pro tem

TRANSMITTED this 10th day of August, 2004, to the parties and interested persons of record:

Glenn J. Amster
Lane Powell Spears Lubersky
1420 - 5th Ave #4100
Seattle WA 98101-2338

Jeff Armstrong
29308 - 215th Ave. SE
Kent WA 98042

David & Joyce Bashford
21414 SE 293rd St.
Kent WA 98042

Sonia Binek
11814 - 115th Ave. NE
Kirkland WA 98034

Dale & Carolyn Bridgewater
29412 - 215th Ave. SE
Kent WA 98042

Shane & Cindy Compton
29420 - 215th Ave. SE
Kent WA 98042-5903

Lorraine Derrick
29530 - 215th Ave. SE
Kent WA 98042

Carl Falk
1902 Bigelow Ave N., #402
Seattle WA 98109

Dave & Jodi Fasnacht
29309 - 215th Ave. SE
Kent WA 98042

Brad Freeman
Triad Associates
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Aron Golden
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Bellevue WA 98009

Richard & Vivian Gould
21409 SE 293rd St.
Kent WA 98042

Ron Halverson
21513 SE 292nd Ct.
Kent WA 98042

John Herbert
Black Diamond Fire Dept. Chief
PO Box 249
Black Diamond WA 98010

Brent Howard
21424 SE 293rd St.
Kent WA 98042

James & Ramona Howe
29503 - 215th Ave. SE
Kent WA 98042

Kevin Jones
The Transpo Group
11730 118th Ave. NE Suite 600
Kirkland WA 98034-7120

Kentlake Highlands LLC
Attn: Michael Walsh
825 - 5th Ave., Ste. 202
Kirkland WA 98033

Beverly Kramlich
21420 SE 291st St.
Kent WA 98042

George Kresovich
Hillis Clark Martin & Peterson
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Seattle WA 98101-2925

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Kirkland WA 98034

John H. Morris
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Robert Morris
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Black Diamond WA 98010

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City of Black Diamond
PO Box 599
Black Diamond WA 98010

Kenneth Peckham
Schneider Homes, Inc.
6510 Southcenter Blvd. #1
Tukwila WA 98188

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Federal Way WA 98003

Bill Porter
29427 - 215th Ave. SE
Kent WA 98042

Larry Price
12033 SE 256th St., Bldg. B
Kent WA 98030-6643

Jerry Prouty
W E Ruth Real Estate
19222-108th SE
Renton WA 98055

Larry Rabel
1136 - 57th Pl. SE
Auburn WA 98092

Mark Reeves
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Kirkland WA 98034

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Louis & Susan La Rosa
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Kent WA 98042

Seattle KC Health Dept.
E. Dist. Environ. Health
14350 SE Eastgate Way
Bellevue WA 98007

Sherry Simmons
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Lisa Dinsmore
DDES/LUSD
MS OAK-DE-0100

Kim Claussen
DDES/LUSD
Current Planning
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Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Kristen Langley
DDES/LUSD
Land Use Traffic
MS OAK-DE-0100

Carol Rogers
DDES/LUSD
MS OAK-DE-0100

Steve Townsend
DDES/LUSD
Land Use Inspections
MS OAK-DE-0100

Larry West
DDES/LUSD
Geo Review
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Prel. Review Engineer
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before August 24, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before August 31, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the

Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JUNE 3, 17 AND 18 AND JULY 1, 2004, PUBLIC HEARINGS ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0004.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker, Kristin Langley, representing the Department; and Colin Lund, Glenn Amster, Kevin Jones and Mark Reeves, representing the Appellant, and Ken Peckham, Larry Price, John Herbert, Sherry Simmons, Donald Robbins, Larry Rabel, Beverly Kramlich, and Lorraine Derrick.

The following exhibits were offered and entered into the record on June 3, 2004:

- Exhibit No. 1 DDES file no. L03P0004
- Exhibit No. 2 DDES preliminary report to for 6/03/04
- Exhibit No. 3 Application for land use permits dated 3/04/03
- Exhibit No. 4 Environmental checklist, received 3/04/03
- Exhibit No. 5 Mitigated determination of non-significance issued 3/26/04
- Exhibit No. 6 Affidavit of posting indicating posting date of 4/11/03, received 4/16/03
- Exhibit No. 7 Plat map, received 3/25/04
- Exhibit No. 8 Assessors maps: NE 5-21-6, SE 5-21-6, NW 4-21-6, SE 4-21-6 and SW 4-21-6
- Exhibit No. 9 Level 1 Downstream Analysis by Triad Associates, revised 5/20/03
- Exhibit No. 10 Level 1 Downstream Analysis by Triad Associates, dated 2/17/03
- Exhibit No. 11 Preliminary Technical Information Report by Triad Associates, revised 12/08/03
- Exhibit No. 12 Preliminary Technical Information Report by Triad Associates, revised 7/09/03
- Exhibit No. 13 Conceptual Drainage Plan by Triad Associates
- Exhibit No. 14 Traffic study by The Transpo Group dated 7/03
- Exhibit No. 15 Addendum traffic study by The Transpo Group, dated 5/27/04
- Exhibit No. 16 Sensitive area special study by Wetland Resources, revised 7/09/03
- Exhibit No. 17 Sensitive area special study by Wetland Resources, revision 1 dated 7/09/03
- Exhibit No. 18 Geotechnical study by Golder Associates dated 2/10/03
- Exhibit No. 19 Wildlife study by Wetland Resources dated 7/09/03
- Exhibit No. 20 Transfer of Development Rights certificate, issued 7/25/03
- Exhibit No. 21 KC Road Services variance decision for file no. L03V0042 dated 12/15/03
- Exhibit No. 22 SWDM adjustment for file no. L03V0037 dated 2/05/04
- Exhibit No. 23 Corrections, revisions and additions to staff report for 6/03/03
- Exhibit No. 24 Memo w/attachments to Ken Peckham from Hans Korve re: Kentlake Highlands Road Connectivity dated 6/01/04
- Exhibit No. 25 Letter w/attachments from Black Diamond Fire Department date 6/02/04
- Exhibit No. 26 *Not entered*
- Exhibit No. 27 Printed comments of Lorraine Derrick
- Exhibit No. 28 Smokerise plat dedication documents
- Exhibit No. 29 Letter from Black Diamond Fire Dept. dated 6/12/03
- Exhibit No. 30 Diagram of Black Diamond area with fire district boundary highlighted

The following exhibits were entered into the record on June 17 and 18, 2004:

- Exhibit No. 31 Facsimile Transmittal Sheet from Triad Associates dated June 17, 2004
- Exhibit No. 32 Letter to the Hearing Examiner from John Herbert of the Black Diamond Fire Department dated June 17, 2004
- Exhibit No. 33 Memo to the Hearing Examiner from Kim Claussen dated June 17, 2004
- Exhibit No. 34 Letter to the Hearing Examiner from Glenn J. Amster dated June 18, 2004
- Exhibit No. 35 Letter to the Hearing Examiner from Kameron C. Cayce dated June 18, 2004

The following exhibits were entered into the record on July 1, 2004:

- Exhibit No. 36 Notice of Continuance for Administrative Purposes dated June 7, 2004
- Exhibit No. 37 Notice of Re-Opened Hearing dated June 23, 2004
- Exhibit No. 38 Faxed copy of Notice of Re-Opened Hearing from DDES waiving time limits
- Exhibit No. 39 Copy of Notice of Re-Opened Hearing from the Applicant waiving time limits
- Exhibit No. 40 Amended Notice of Re-Opened Hearing (Change of Date) dated June 28, 2004

- Exhibit No. 41 Resolution No. 04-139, Opposition of New Construction from King County
Fire Protection District No. 17
- Exhibit No. 42 Resolution No. 04-140, Approval of Mitigation Agreement from King County
Fire Protection District No. 17
- Exhibit No. 43 Mitigation Agreement between Kentlake Highlands, LLC and King County Fire
Protection District No. 17

JNO/gao
L03P0004 RPT